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**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**SCOTT ARTHUR OPTENBERG**  
2315 Eastlake Drive  
Kelseyville, CA 95451

**Registered Nurse License No. 761162**

RESPONDENT

Case No. 2013-178

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 11, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-178 against Scott Arthur Optenberg (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about October 8, 2009, the Board of Registered Nursing (Board) issued Registered Nurse License No. 761162 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

3. On or about September 11, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-178, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

2315 Eastlake Drive

Kelseyville, CA 95451.

1           4.     Service of the Accusation was effective as a matter of law under the provisions of  
2     Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
3     124.

4           5.     On or about September 19, 2012, the signed Certified Mail Receipt was returned to  
5     our office indicating a delivery date of September 17, 2012.

6           6.     Business and Professions Code section 2764 states:

7                 The lapsing or suspension of a license by operation of law or by order or decision of  
8     the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive  
9     the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding  
10    against such license, or to render a decision suspending or revoking such license.

11          7.     Government Code section 11506 states, in pertinent part:

12                 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
13    notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
14    not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's  
15    right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

16          8.     Respondent failed to file a Notice of Defense within 15 days after service of  
17    the Accusation upon him, and therefore waived his right to a hearing on the merits of Accusation  
18    No. 2013-178.

19          9.     California Government Code section 11520 states, in pertinent part:

20                 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
21    agency may take action based upon the respondent's express admissions or upon other evidence  
22    and affidavits may be used as evidence without any notice to respondent.

23          10.    Pursuant to its authority under Government Code section 11520, the Board after  
24    having reviewed the proof of service dated September 11, 2012, signed by Brent Farrand, finds  
25    Respondent is in default. The Board will take action without further hearing and, based on  
26    Accusation No. 2013-178 and the documents contained in Default Decision Investigatory  
27    Evidence Packet in this matter which includes:

28                 //

- 1 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-178,  
2 Statement to Respondent, Notice of Defense (two blank copies), Request  
3 for Discovery and Discovery Statutes (Government Code sections  
4 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail  
5 receipt or copy of returned mail envelopes;
- 6 Exhibit 2: License History Certification for Scott Arthur Optenberg, Registered  
7 Nurse License No. 761162;
- 8 Exhibit 3: Court and Arrest Records;
- 9 Exhibit 4: Out of State Discipline (Texas Board of Nursing);
- 10 Exhibit 5: Affidavit of Kami Pratab;
- 11 Exhibit 6: Declaration of costs by Office of the Attorney General for prosecution of  
12 Case No. 2013-178.

13 The Board finds that the charges and allegations in Accusation No. 2013-178 are separately and  
14 severally true and correct by clear and convincing evidence.

15 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by  
16 the Office of the Attorney General contained in the Default Decision Investigatory Evidence  
17 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that  
18 the reasonable costs for Investigation and Enforcement in connection with the Accusation are  
19 \$1,137.50 as of October 16, 2012.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Scott Arthur Optenberg has subjected his following license(s) to discipline:

a. Registered Nurse License No. 761162

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's license(s) based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.

a. Violation of Business and Professions Code section 2761(a) - Unprofessional Conduct.

b. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary action by another State Board of Nursing.

c. Violation of Business and Professions Code section 2761(f) - Conviction substantially related to the qualifications, functions and duties of a registered nurse.

d. Violation of Business and Professions Code section 2762(b) - Use of controlled substance or alcohol to an extent or in a manner dangerous or injurious to oneself and others.

e. Violation of Business and Professions Code section 2762(c) - Criminal conviction involving alcoholic beverages or controlled substances.

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**ORDER**

IT IS SO ORDERED that Registered Nurse License No. 761162, heretofore issued to Respondent Scott Arthur Optenberg, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 15, 2013.

It is so ORDERED January 16, 2013



Board of Registered Nursing  
Department of Consumer Affairs  
State of California

Attachment:

Exhibit A: Accusation No. 2013-178

# Exhibit A

Accusation No. 2013-178

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General  
JONATHAN D. COOPER  
Deputy Attorney General  
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Fax: (415) 703-5480  
*Attorneys for Complainant*

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. **2013-178**

**SCOTT ARTHUR OPTENBERG**  
2315 Eastlake Drive  
Kelseyville, CA, 95451

**ACCUSATION**

**Registered Nurse License No. 761162**

Respondent.

Complainant alleges:

**PARTIES**

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about October 8, 2009, the Board of Registered Nursing issued Registered Nurse License Number 761162 to Scott Arthur Optenberg (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1           4.     Section **2750** of the Business and Professions Code (Code) provides, in pertinent part,  
2     that the Board may discipline any licensee, including a licensee holding a temporary or an  
3     inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
4     Nursing Practice Act.

5           5.     Section **2764** of the Code provides, in pertinent part, that the expiration of a license  
6     shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
7     licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the  
8     Code, the Board may renew an expired license at any time within eight years after the expiration.

9                     **STATUTORY AND REGULATORY PROVISIONS**

10          6.     Section **490** of the Code states:

11           (a) In addition to any other action that a board is permitted to take against a licensee, a  
12     board may suspend or revoke a license on the ground that the licensee has been convicted of a  
13     crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
14     or profession for which the license was issued.

15           (b) Notwithstanding any other provision of law, a board may exercise any authority to  
16     discipline a licensee for conviction of a crime that is independent of the authority granted under  
17     subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
18     of the business or profession for which the licensee's license was issued.

19           (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
20     conviction following a plea of nolo contendere. An action that a board is permitted to take  
21     following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
22     the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
23     made suspending the imposition of sentence, irrespective of a subsequent order under Section  
24     1203.4 of the Penal Code.

25           (d) The Legislature hereby finds and declares that the application of this section has been  
26     made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
27     554, and that the holding in that case has placed a significant number of statutes and regulations  
28     in question, resulting in potential harm to the consumers of California from licensees who have



1 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
2 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
3 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change  
4 to, but rather are declaratory of, existing law.

5 7. Section 2761 of the Code states, in pertinent part:

6 The board may take disciplinary action against a certified or licensed nurse or deny an  
7 application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the following:

9  
10 (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action  
11 against a health care professional license or certificate by another state or territory of the United  
12 States, by any other government agency, or by another California health care professional  
13 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that  
14 action.

15  
16 (f) Conviction of a felony or of any offense substantially related to the qualifications,  
17 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
18 conclusive evidence thereof.

19  
20 8. Section 2762 of the Code states, in pertinent part:

21 In addition to other acts constituting unprofessional conduct within the meaning of this  
22 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the  
23 following:

24  
25 (b) Use any controlled substance as defined in Division 10 (commencing with Section  
26 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
27 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
28 himself or herself, any other person, or the public or to the extent that such use impairs his or her

1 ability to conduct with safety to the public the practice authorized by his or her license.

2 (c) Be convicted of a criminal offense involving the prescription, consumption, or self-  
3 administration of any of the substances described in subdivisions (a) and (b) of this section, or the  
4 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)  
5 of this section, in which event the record of the conviction is conclusive evidence thereof.

6 ...  
7 9. California Code of Regulations, title 16, section 1444, states:

8 A conviction or act shall be considered to be substantially related to the qualifications,  
9 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
10 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
11 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

12 (a) Assaultive or abusive conduct including, but not limited to, those violations listed in  
13 subdivision (d) of Penal Code Section 11160.

14 (b) Failure to comply with any mandatory reporting requirements.

15 (c) Theft, dishonesty, fraud, or deceit.

16 (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the  
17 Penal Code.

#### 18 **COST RECOVERY**

19 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licensee found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case.

#### 23 **FIRST CAUSE FOR DISCIPLINE**

24 (Criminal Conviction)

25 11. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the  
26 Code in that he has been convicted of a crime substantially related to the qualifications, functions,  
27 and duties of a registered nurse. The circumstances are as follows:

28 12. On or about April 30, 2012, in Lake County Superior Court case number CR928619,

1 Respondent was convicted of having violated California Vehicle Code section 23103.5 (alcohol-  
2 related reckless driving). The conviction was based on an incident which occurred on or about  
3 December 8, 2011, during which Respondent drove a motor vehicle while intoxicated, and with a  
4 blood alcohol level of .11%.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Alcohol-Related Criminal Conviction)

7 13. Respondent is subject to disciplinary action under section 2762(c) of the Code in that  
8 he has been convicted of a crime involving the use, self-administration and consumption of  
9 alcohol. The circumstances are as follows:

10 14. On or about April 30, 2012, in Lake County Superior Court case number CR928619,  
11 Respondent was convicted of having violated California Vehicle Code section 23103.5 (alcohol-  
12 related reckless driving). The conviction was based on an incident which occurred on or about  
13 December 8, 2011, during which Respondent drove a motor vehicle while intoxicated, and with a  
14 blood alcohol level of .11%.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Dangerous Use of Alcohol)

17 15. Respondent is subject to disciplinary action under section 2762(b) of the Code in that  
18 he used alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any  
19 other person, or the public and/or to the extent that such use impaired his ability to conduct with  
20 safety to the public the practice authorized by his license. The circumstances are as follows:

21 16. On or about April 30, 2012, in Lake County Superior Court case number CR928619,  
22 Respondent was convicted of having violated California Vehicle Code section 23103.5 (alcohol-  
23 related reckless driving). The conviction was based on an incident which occurred on or about  
24 December 8, 2011, during which Respondent drove a motor vehicle while intoxicated, and with a  
25 blood alcohol level of .11%.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct -- Revocation of Texas License)

3 17. Respondent is subject to disciplinary action under section 2761(a)(4) of the Code in  
4 that he committed unprofessional conduct, in that the State of Texas revoked Respondent's  
5 nursing license for reasons substantially related to the practice of nursing. The circumstances are  
6 as follows:

7 18. On or about December 13, 2011, in an action entitled "In the Matter of Permanent  
8 Certificate Number 441235 Issued to Scott Arthur Optenberg," the Eligibility and Disciplinary  
9 Committee of the Texas Board of Nursing revoked Respondent's nursing license,<sup>1</sup> Permanent  
10 Certificate Number 441235. This action was based on findings that Respondent had committed  
11 misconduct as follows:

- 12 a. Failure to document a new order to increase the amount of medication to be  
13 administered to a patient, and failure to forward the new medication order to the  
14 hospital pharmacy, which actions affected the efficacy of the patient's treatment.  
15 b. Administration of an incorrect dose of medication to a patient, which error was likely to  
16 cause injury to the patient.  
17 c. Falsely documenting the transmission of a medication order to the hospital pharmacy,  
18 resulting in a patient not receiving necessary, prescribed medication.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
21 and that following the hearing, the Board of Registered Nursing issue a decision:

- 22 1. Revoking or suspending Registered Nurse License Number 761162, issued to Scott  
23 Arthur Optenberg;  
24 2. Ordering Scott Arthur Optenberg to pay the Board of Registered Nursing the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
26

27 <sup>1</sup> In Texas the terms "License" and "Certificate" are used interchangeably. (See Vernon's  
28 Texas Statutes and Codes Annotated, section 301.452, 2012 Volume, Revisor's Note (1);  
Vernon's Texas Statutes and Codes Annotated, section 51.001(3), 2012 Volume).

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Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: September 11, 2012

*Stacie Brown*  
For LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant